IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

WEDNESDAY, THE EIGHTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MRS JUSTICE T.MEENA KUMARI

and
THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT APPEAL NO : 1003 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 02/12/2003 in WP NO: 33538 OF 1997 on the file of the High Court.)

Between:

1 Dy. Inspector General, C.I.S. Force, (Central Industrial Security Force) NFC, Hyderabad.
2 Commandant, C.I. S.F, N.F.C. E.C.I.L. Post, Hyderabad.
3 The Inspector General , CISF, Head Quarters, South - West Sector, Mumbai.

..... APPELLANTS

AND

Bijay Kumar Pradhan, (B.K. Pradhan), S/o B. Pradhan, Hindu,
R/o Quarter No. 8/9, Type.II, CISF Complex, NFC, Hyderabad.

.....RESPONDENT

Counsel for the Appellants: MR.S.S.VARMA

Counsel for the Respondent No.: MR.J.M.NAIDU

The Court made the following :

ORDER: (*per Hon'ble Smt Justice T. Meena Kumari)*

This matter is listed today in interlocutary stage. Twice adjournments were granted and even today also when the matter is taken up for hearing, one Mr. R. Shiv Shankar appearing on behalf of Sri S.S. Sarma-learned counsel for the appellants sought for one more adjournment. But this Court, instead of giving adjournment, is inclined to decide the matter basing on the material available on record.

The present appeal is preferred by the appellants against the order of the learned single judge of this Court dated 2-12-2003 in Writ Petition No. 33538 of 1997. Appellants are the respondents in the writ petition. For the sake of convenience, the parties will be referred to as arrayed in the writ petition.

Writ petitioner filed the writ petition for a writ of mandamus seeking to set aside the proceedings of the 2nd respondent dated 25.5.1996 as confirmed by the 1st respondent by his proceedings dated 29-5-1997 wherein the period of 148 days commencing from 25-6-1996 to 19-11-1996 was treated as extraordinary leave instead of compulsory wait period and consequently to direct the respondents to pay salary to the petitioner by treating the entire period as compulsory wait.

The Writ Petitioner stated in his writ petition that while he was working as Head Constable Driver in the Central Industrial Security Force at National Thermal Power Station, Paraka, was deputed to work in the Sardar Vallabhabhai Patel National Police Academy at Hyderabad. While working as such, he fell sick and applied for leave from 5.5.1996 to 24.6.1996. In the meanwhile, his period of deputation had expired. Therefore, the SVP National Police Academy did not permit him to work any further in the absence of orders from the parent department. He was neither relieved from the Police Academy nor movement orders were given to him to join elsewhere. Ultimately the Government gave orders and he joined at Hyderabad in CISF NFC, 19-11-1996. However, the respondents have regularized the period from 8.5.1996 to 24.6.1996 only and

treated the same as commuted leave, but the period from 25.6.1996 to 19.11.1996 was treated as extraordinary leave without medical certificate and he was not paid any salary for that period.

Respondents filed counter stating that the absence of the petitioner from 8.5.1996 to 24.6.1996 was rightly regularized as per CCS leave rules, 1972 and that the claim of the petitioner that his absence period i.e. 25-6-1996 to 19-11-1996 has to be regularized as compulsory wait and he has to be paid full pay and allowances for the said period cannot be allowed as the extant Leave Rules do not permit such a claim and it is also further stated that the Central Administrative Tribunal, Hyderabad Bench in O.A. No. 666 of 1996 has not directed to treat the absence period of the petitioner as compulsory wait.

The learned single Judge, having gone through the entire material placed before him, and on hearing both sides, observed in his order dated 2.12.2003 that respondents failed to substantiate their stand by acceptable reasons for not treating the absence period from 25.6.1996 to 19.11.1996 as compulsory wait since the petitioner was neither permitted to join duty after his sick leave nor given any movement orders by the department enabling him to go and report and that the department itself took time and ultimately issued orders on 19.11.1996 and hence the petitioner cannot be denied the salary and other benefits for the period from 25.6.1996 to 19.11.1996. It has also been further observed that the fax message dated 8.11.1996 issued by the Director General of CISF, New Delhi to the first respondent shows that the petitioner was posted to CISF Unit, NFC, Hyderabad from the date of repatriation from National Police Academy and that the petitioner was directed to report duty before the Commandant, CISF Unit, NFC, Hyderabad and that his pay and allowances for the said period with effect from 8.5.1996 onwards be drawn after regularizing his absence period. It has also been further observed by the learned Judge that the respondents are bound to regularize the absence of the petitioner pursuant to the orders of the Director General of CISF and thereby set aside the orders of the 2nd respondent which were confirmed by the 1st respondent and directed the respondents to reconsider the matter and pass appropriate orders fixing the pay of the petitioner at appropriate stage treating the said period of 148 days i.e. from 25.6.1996 to 19.11.1996 as compulsory wait period and accordingly allowed the writ petition. Aggrieved by the same, the present writ appeal is by

the respondents in the writ petition.

A Division Bench of this Court, while admitting the Writ Appeal on 12.7.2004, ordered interim suspension of the impugned order in W.A.M.P. No. 1785 of 2004 and later the matter underwent two adjournments. In the meanwhile, the writ petitioner filed vacate stay petition in WAVMP No. 2740 of 2004. When the matter was called for hearing on 6.12.2004, at the request of the learned counsel for the appellants-respondents, the matter was adjourned to 7.12.2004 and again the same was adjourned to today.

The undisputed fact remains that the deputation of the writ petitioner expired on 24.6.1996 and it is also not in dispute that the writ petitioner applied sick leave from 5-5-1996 to 24.6.1996 and respondents have regularized the said period from 8.5.1996 to 24.6.1996. However, the period from 25.6.1996 till 19.11.1996 was not regularized, but the same was treated as extraordinary leave and the fax message dated 8.11.1996 issued by the Director General of CISF, New Delhi to the 1st respondent goes to show that the writ petitioner was directed to report duty before the Commandant, CISF, NFC, Hyderabad and his pay and allowances for the period with effect from 8.5.1996 onwards be drawn after regularizing his absence period. In view of the above fax message, it is clear that the department itself has made the writ petitioner to wait compulsorily till he received the order dated 8.11.1996, which remains undisputed by either of the parties.

Therefore, in the light of the above undisputed facts and circumstances, the learned single Judge was perfectly justified in directing the respondents to reconsider the case of the writ petitioner and pass appropriate orders fixing the pay of the petitioner at appropriate stage treating the interregnum period of 148 days running from 25.6.1996 to 19.11.1996 as compulsory wait period and hence the order impugned does not require any interference. The appeal fails and is liable to be dismissed.

Accordingly, Writ Appeal No. 1003 of 2004 is dismissed. No costs.

T. MEENA KUMARI, J.

08-12-2004

S. ANANDA REDDY, J.

KVSN/DVS

To

1 Dy. Inspector General, C.I.S. Force, (Central Industrial Security Force) NFC, Hyderabad.
2 Commandant, C.I. S.F, N.F.C. E.C.I.L. Post, Hyderabad.
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4 Two CD copies.